



**AGREEMENT ON THE
RETURN OR SHARING OF
RECOVERED ASSETS**

AGREEMENT ON THE RETURN OR SHARING OF RECOVERED ASSETS

Preamble

The Member States of the Caribbean Community (CARICOM):

Recalling the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy, signed at Nassau, The Bahamas on 5 July 2001;

Recalling also, the CARICOM Crime and Security Strategy, adopted by the Conference of Heads of Government of the Caribbean Community at its Twenty-Fourth (24th) Intersessional Meeting held in Haiti in February 2013, which emphasised the importance of asset recovery as an effective tool against organised crime;

Recognising the importance of combating crime, especially corruption, money laundering, the trafficking of illicit drugs and illicit firearms, ammunition and explosives, the proliferation of small arms, ammunition and weapons of mass destruction, organised crime, cybercrime, trafficking in persons and smuggling of migrants, as well as terrorism in all forms and manifestations, including its financing and other offences;

Cognisant that most CARICOM States are signatories to the United Nations Convention Against Transnational Organised Crime and the United Nations Convention against Corruption which promote cooperation among States Parties including in the sharing of recovered assets;

Cognisant also that the Financial Action Task Force Recommendations demand that States Parties facilitate cooperation through the use *inter alia* of mutual legal assistance;

Reaffirming that nothing in the provisions of this Agreement should prejudice in any way the provisions and the principles on regional and international cooperation set forth in international instruments, and that this Agreement is intended to provide operational guidance and enhance the effectiveness of international cooperation for the purpose of the return or sharing of recovered assets;

Convinced that an Agreement on the return or sharing of recovered assets represents a useful tool to facilitate greater international cooperation;

Willing to create an appropriate framework for the return or sharing of recovered assets on the basis of compliance with the principles of reciprocity and dual criminality;

Conscious of the importance of cooperation with Non-CARICOM States in enhancing international cooperation for the return or sharing of recovered assets,

Have hereby agreed as follows:

Article 1 Definitions

For the purposes of this Agreement:

"Asset Management Authority" means the authority having the responsibility to manage and keep proper records of recovered assets for the purposes of this Agreement;

"CARICOM Security Institution" means any Institution of CARICOM established by inter-governmental Agreement with a crime and security mandate or such other entity as approved by the CONSLE;

"Competent Authority" means the authority with responsibility for transmitting, receiving and executing requests for the return or sharing of recovered assets;

"CONSLE" means the Council for National Security and Law Enforcement established by the Conference of Heads of Government of the Caribbean Community at its Twenty-Sixth Meeting held from 5-7 July 2005 in Gros Islet, St Lucia;

"Party" means any CARICOM Member which has ratified this Agreement or any other State or Territory which has acceded to this Agreement pursuant to Article 19 herein;

"proceeds of crime" means any property realized or derived from or obtained, directly or indirectly, through the commission of an offence or intended for use in the commission of an offence or which has been used for the purpose of facilitating or committing an offence;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

"recovered assets" means:

(a) proceeds of crime obtained by a Party by order of a court of competent jurisdiction;

(b) property forfeited or confiscated by a court of competent jurisdiction having been used in or in connection with the commission of an offence; and

(c) amounts ordered by a court of competent jurisdiction to be paid to a Party in order to deprive a person of the financial benefit of his criminal conduct;

"Regional Fund" means a CARICOM Fund established by CONSLE for the purpose of collecting a percentage of assets recovered from the proceeds of crime by way of cooperation between two or more member states towards funding regional crime and security projects as approved by the CONSLE;

"Requested Party" means a Party which is in possession of recovered assets;

"Requesting Party" means a Party which has made a request for the return or sharing of recovered assets; and

"Secretary-General" means the Secretary-General of the Caribbean Community.

Article 2

Scope of Agreement

1. This Agreement seeks to enhance the effectiveness of regional cooperation between the Parties by establishing a framework for the return or sharing of recovered assets.
2. Based on the principle of reciprocity or other existing bilateral or multilateral instruments or through the use of national legislation, the Parties shall provide the widest cooperation to other Parties.
3. Whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the Requested Party place the acts or omissions which constitute the offence within the same category of criminal offence, or denominate the criminal offence by the same terminology as the Requesting Party, if the underlying conduct of the offence for which assistance is sought constitutes a criminal offence under the laws of both Parties.
4. The Parties shall, as far as possible, apply the provisions of this Agreement in:
 - (a) concluding bilateral arrangements; and
 - (b) cooperating with CARICOM Members not party to this Agreement, and with Third States.
5. Nothing in this agreement will prejudice the obligations of the Parties under the United Nations Convention against Corruption as applicable, in particular with regard to the return and disposal of assets under Article 57 of that Convention.
6. Where, after the entry into force of this Agreement, a Party to this Agreement, enters into an asset return or sharing agreement or arrangement with a state that is not a Party to this Agreement, that Party shall, as soon as possible after entering into that agreement notify the Secretary-General.

Article 3

Circumstances in which recovered assets shall be returned or shared

1. Where a Requested Party has cooperated with, or received cooperation from a Requesting Party, through *inter alia* -
 - (a) joint investigations; or
 - (b) the exchange of information relating to individuals, entities and assets,to facilitate the identification, location, freezing, and recovery of assets, it shall return or share such assets with the Requesting Party in accordance with this Agreement, without prejudice to the obligations outlined in international agreements to which they may be parties.
2. The Parties shall, in the return or sharing of recovered assets under this Agreement, respect the rights of *bona fide* third parties.

3. The Parties shall only effect the return or sharing of the recovered assets on the condition that a final judgment has been issued by a court of competent jurisdiction.

Article 4 Requests for the return or sharing of recovered assets

1. A request for the return or sharing of recovered assets shall be made only upon final judgment by a court of competent jurisdiction. The Requested Party shall, as far as possible, be informed prior to final judgment of the interest of the Requesting Party.

2. A request for the sharing or return of recovered assets shall be made to the Competent Authority of the Requested Party within a time limit of six months from the date of issuance of the final judgment, unless the Parties mutually agree otherwise in exceptional cases.

3. The request shall set forth the circumstances of the cooperation to which it relates and shall include sufficient details to identify the case, the recovered assets and the institution or institutions involved, or such other information as may be mutually agreed upon between the Parties.

4. On receipt of a request for the return or sharing of recovered assets made in accordance with the provisions of this Article, the Requested Party in possession of the assets shall, return or share such assets with the other Requesting Party in accordance with the guidelines set out in Article 5 of this Agreement.

5. When victims are identifiable, decisions related to the sharing of recovered assets shall be made giving priority to the compensation and other rights of victims and in accordance with prevailing domestic law.

6. The Asset Management Authority responsible for the administration of recovered assets shall take reasonable steps to preserve the value of the assets in accordance with its national legislation.

Article 5 Guidelines for the return or sharing of recovered assets

The Parties agree to apply the following guidelines:

- (a) In determining the amount of the recovered assets to be shared, the Requested Party may include any interest and appreciation that has accrued on the recovered assets and may deduct all reasonable expenses incurred. Such expenses may include expenses associated with investigations, based on a detailed breakdown to be submitted to the Requesting Party, expenses borne to preserve and maintain the assets and those incurred in the prosecution or judicial proceedings leading to the recovery.
- (b) The deduction of the reasonable expenses may be waived at the discretion of the Requested Party.
- (c) The Requested Party shall take reasonable steps to preserve the value of the recovered assets in accordance with national

legislation. Where no national legislation exists the Requested Party shall take steps as are necessary to preserve the recovered assets.

- (d) Subject to paragraph (g) of this Article, the Requested Party may, after deducting reasonable expenses as set out in paragraph (a) of this Article, retain for itself ten percent (10%) of the recovered assets and shall share or return the balance of the recovered assets in the proportions agreed upon by the Parties.
- (e) The Requested Party shall transfer a sum equivalent to the amount agreed under paragraph 5 (d) of this Article to the Requesting Party.
- (f) In all cases, the percentage shall be calculated with consideration of the following parameters: the nature and importance of the assets, the complexity and importance of the cooperation, the impact of the cooperation on the outcome of the case, and the investment of each Party in programmes of prevention, rehabilitation, compensation for damages to victims of crime, victims assistance and victims protection along with other existing support.
- (g) When a Requested Party has recovered assets derived from corruption offences, including but not limited to embezzlement or misappropriation of public funds and bribery, irrespective of whether they were laundered, the Requested Party shall return the assets after deducting any reasonable expenses.
- (h) Where the recovered asset is in the form of land or other immovable property, the recovered assets shall be deemed to be the net proceeds of the sale of such property ascertained in accordance with the laws of the Requested Party, or where no such laws exist, the net value of the property ascertained on the basis of an independent valuation.

Article 6

Payment of shared recovered assets

1. Unless the Parties agree otherwise, any sum shared in accordance with the provisions of this Agreement shall be paid:
 - (a) in the currency of the Requesting Party unless otherwise agreed to by the Parties; and
 - (b) by means of an electronic transfer of funds or by cheque.
2. The Parties under this Agreement shall designate the responsible office and pertinent account for the purpose of the payment of any such sum.

Article 7

Terms of the return of recovered assets

1. In returning the recovered assets, the Parties recognise that all right or title to, as well as interest in these recovered assets, has already been adjudicated and that no further judicial proceedings are necessary to complete the recovery. The Requested Party assumes no liability or responsibility for the assets once they have been returned and relinquishes all right or title to and

interest in the returned assets.

2. In so far as it may be mutually agreed between the Parties, the recovered assets may be transferred in their original form to the Requesting Party, in accordance with the national legislation of the Requested Party.

Article 8 **National Allocation of each Party's share of recovered assets**

1. The Parties undertake to take such measures as may be necessary, including the enactment of national legislation, to allocate the returned or shared assets as follows:

- (a) eighty per cent (80%) to victim compensation (if compensation did not occur before), victim assistance, justice protection, law enforcement, prosecution and judicial services, correction systems, other similar institutions or programmes or to such other programmes or institutions prescribed in national legislation,
- (b) ten per cent (10%) to the CARICOM Security Institutions and the Regional Fund in the proportions determined annually by CONSLE, and
- (c) ten per cent (10%) to be allocated at the discretion of the Requested and Requesting Party as the case may be.

2. In accordance with Article 5(g), the provisions of this Article shall not apply to the recovered assets derived from corruption offences, which shall be returned in full to their original source, after the deduction of reasonably incurred expenses.

Article 9 **Prohibition against the imposition of conditions**

When the Requested Party shares any amount in accordance with the provisions of this Agreement, it shall not impose any condition on the Requesting Party in the use of the funds and, in particular, it may not compel the Requesting Party to share the funds with any other State, organisation or individual.

Article 10 **Competent Authority and Asset Management Authority**

1. Each Party shall designate a Competent Authority which shall have the responsibility and power to execute requests received for the return or sharing of recovered assets or to transmit these requests to the Competent Authority of the Requested Party for execution.

2. Requests for the return or sharing of recovered assets shall be made by or submitted to the Competent Authority of a Requesting Party or Requested Party as the case may be.

3. The Competent Authority may, with respect to any request for the return or sharing of recovered assets, grant the request in whole or in part in accordance with the guidelines provided in Article 5 of this Agreement.

4. Each Party shall designate an Asset Management Authority which shall have the responsibility to manage and keep proper records of recovered assets.

ARTICLE 11

Refusal of requests for the return or sharing of recovered assets

1. The Requested Party may refuse to return or share, in whole or in part, recovered assets where:

- (a) the request does not satisfy paragraphs 1, 2 or 3 of Article 4;
- (b) the value of the recovered assets is *de minimis*, and the cost of repatriation exceeds the value of the recovered assets; or
- (c) the return or sharing of the recovered assets would be inconsistent with its obligations under the United Nations Convention against Corruption or any other international agreement in respect of the return or sharing of assets to which it becomes a party.

2. The Competent Authority of a Requested Party shall give reasons for any refusal to return or share recovered assets.

Article 12

Periodic review and amendment

1. Any Party may submit proposals for the amendment or review of this Agreement.

2. The text of any such amendment and the reasons therefor shall be submitted to the Secretary-General who shall forward them to all Parties within thirty (30) days of receipt.

3. The Parties shall be requested to communicate to the Secretary-General whether the proposed amendment is acceptable and also to submit any comments thereon.

4. An amendment shall enter into force on the thirtieth day following the date of deposit of the eighth instrument of ratification in accordance with Article 16 of this Agreement. Thereafter, the amendment shall enter into force for any Party on the thirtieth day following the deposit of its own instrument of ratification. An amendment shall be binding only on those Parties which have ratified it

Article 13

Consultations

1. Any Party may request consultations with another Party or among all Parties concerning the interpretation, application or implementation of this Agreement.

2. The Parties shall consult promptly, at the request of another Party, concerning the interpretation, application or implementation of this Agreement, either generally, or in relation to a particular case.

Article 14 Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Agreement through negotiation.
2. Where a dispute cannot be settled through negotiation, the Party or Parties aggrieved may write to the Secretary-General requesting a resolution of the dispute.
3. Where such application is received in accordance with paragraph 2 of this Article, the Secretary-General shall use his good offices to arrive at a resolution of the dispute.
4. If nine (9) months after the date of the request to the Secretary-General for resolution a dispute cannot be settled, the matter may be referred to an arbitral tribunal of three (3) arbitrators by any one of the Parties.
5. Each Party shall be entitled to appoint one (1) arbitrator within fifteen (15) days following the request of either Party and the two arbitrators shall within fifteen (15) days following the date of their appointments appoint a third arbitrator who shall be the Chairman.
6. Where any Party fails to appoint an arbitrator under paragraph 5, the other Party may request the President of the Caribbean Court of Justice to appoint an arbitrator within ten (10) days.
7. Where the two (2) arbitrators appointed under paragraph 5 fail to appoint a third arbitrator either Party may request the President of the Caribbean Court of Justice to appoint an arbitrator within ten (10) days.
8. The arbitral tribunal shall establish its own rules of procedure.
9. The decision of the arbitral tribunal shall be accepted as the final adjudication of the dispute.

Article 15 Signature

This Agreement shall be open for signature by the Members of the Caribbean Community.

Article 16 Ratification

1. This Agreement shall be subject to ratification by Members of the Caribbean Community in accordance with their respective constitutional procedures.
2. Amendments to this Agreement shall be subject to ratification by the Parties.
3. Instruments of ratification shall be deposited with the Secretary-General, who shall transmit certified copies to the Government of each Party.

Article 17
Depositary

This Agreement, any amendment thereto, instruments of accession and ratification shall be deposited with the Secretary-General who shall forward certified true copies thereof to all Parties.

Article 18
Entry into force

1. This Agreement shall enter into force on the thirtieth (30th) day following the date of deposit of the eighth instrument of ratification.
2. This Agreement shall apply only to requests for cooperation in the return or sharing of recovered assets made after its entry into force or after its provisional application in accordance with Article 19.

Article 19
Provisional application

1. A Member State may upon the signing of this Agreement or at any later date before it enters into force, declare its intention to apply it provisionally.
2. Upon such declaration by five (5) Member States, the provisions of this Agreement shall be applied provisionally pending its entry into force in accordance with Article 18.

Article 20
Accession

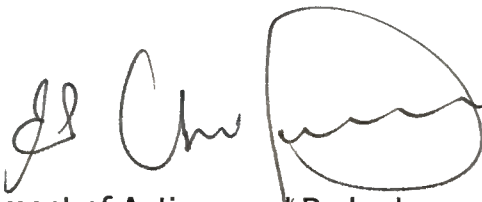
1. After the entry into force of this Agreement, any Member of the Caribbean Community or any other state or territory, which in the opinion of the CONSLE is able to fulfil the obligations of this Agreement, may deposit an appropriate instrument of accession with the Secretary-General.
2. Accession shall take effect on the date of the receipt of such instrument of accession by the Secretary-General who shall transmit a certified copy to the Government of each Party.

Article 21
Withdrawal from the Agreement


1. A Party may withdraw from this Agreement at any time by written notification addressed to the Secretary-General who shall forthwith notify the other Parties.
2. Withdrawal shall become effective six (6) months after the date of receipt of notification by the Secretary-General unless the notice is withdrawn before the expiry of this period.
3. Notwithstanding paragraph 2 of this Article, a Party shall honour any obligations duly assumed by it during the period it has been a Party to this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.


Done at Basseterre, St Kitts + Nevis, this 27th day of February, 2019.

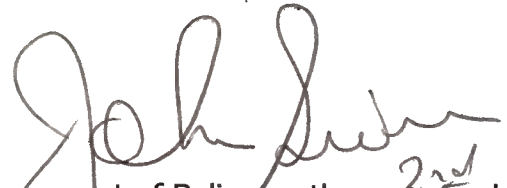
Signed by 
for the Government of Antigua and Barbuda on the 5th day of July
2019


at Castro - St. Lucia

Signed by 
for the Government of The Bahamas on the 2nd day of
MARCH, 2022

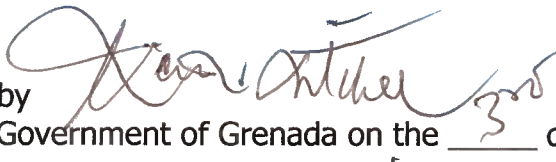
at SAN PETERS, RELIANCE

Signed by 
for the Government of Barbados on the 27th day of February, 2019
at Basseterre, St. Kitts and Nevis

Signed by 
for the Government of Belize on the 2nd day of March, 2022
at San Pedro, Belize


Signed by
for the Government of the Commonwealth of Dominica on the 19th day of
FEBRUARY, 2020

at BRIDGETOWN, BARBADOS

Signed by 
for the Government of Grenada on the 3rd day of May 2019
at Port of Spain, Trinidad & Tobago

Signed by
for the Government of the Co-operative Republic of Guyana on the _____ day of

_____, _____

at

Signed by
for the Government of the Republic of Haiti on the _____ day of

_____, _____

at

Signed by
for the Government of Jamaica on the _____ day of _____, _____

at

Signed by
for the Government of Montserrat on the _____ day of

_____, _____

at

Signed by
for the Government of the Federation of St. Kitts and Nevis on the _____ day of

_____, _____

at

Signed by
for the Government of Saint Lucia on the 3 day of May, 2019

 _____, _____

at Point of Spain, Trinidad & Tobago

Signed by Ralph Gonsalves
for the Government of St. Vincent and the Grenadines on the 5th day of
July, 2019 at Crozier, St. Lucia
at

Signed by _____
for the Government of the Republic of Suriname on the _____ day of
_____, _____
at

Signed by _____
for the Government of the Republic of Trinidad and Tobago on the _____ day of
_____, _____
at